

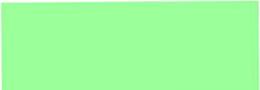
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U.S. Citizenship
and Immigration
Services

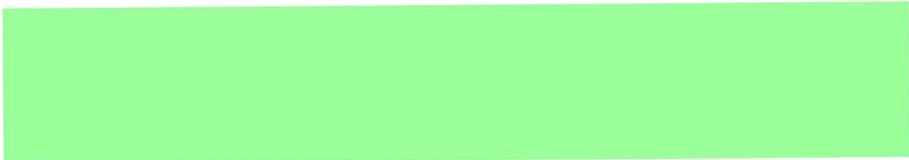


DATE: **JAN 08 2015** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO) and the appeal was dismissed. The matter is now before us on a motion to reopen. The motion will be dismissed.

The petitioner is a foreign corporation established in Mexico. It seeks to employ the beneficiary in its Texas-based branch office as its CEO. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director denied the petition, concluding that the petitioner failed to establish that: (1) the foreign entity continues to do business abroad; (2) the petitioner and the beneficiary's foreign employer have a qualifying relationship; (3) the beneficiary was employed abroad in a qualifying managerial or executive capacity; (4) the beneficiary would be employed in the United States in a qualifying managerial or executive capacity; and (5) the petitioner has the ability to pay the beneficiary's proffered wage. The petitioner appealed the director's decision: We reviewed the record of proceeding and determined that it contained sufficient evidence to establish that a qualifying relationship exists between the beneficiary's U.S. and foreign employers, which, in this instance are the same entity. Accordingly, we withdrew the second ground as a basis for denial. However, we found that the petitioner failed to provide sufficient evidence to overcome the four remaining grounds cited in the director's decision and therefore dismissed the appeal in a decision dated July 9, 2014.

The petitioner now files a Form I-290B, indicating that it is filing a motion to reopen. The petitioner asks that we consider additional evidence that is currently submitted in support of the motion.

I. MOTION REQUIREMENTS

A. Overarching Requirement for Motions by a Petitioner

The provision at 8 C.F.R. § 103.5(a)(1)(i) includes the following statement, limiting a U.S. Citizenship and Immigration Services (USCIS) officer's authority to reopen the proceeding or reconsider the decision to instances where "proper cause" has been shown for such action:

[T]he official having jurisdiction may, for proper cause shown, reopen the proceeding or reconsider the prior decision.

Thus, to merit reopening or reconsideration, the submission must not only meet the formal requirements for filing (such as, for instance, submission of a Form I-290B that is properly completed and signed, and accompanied by the correct fee), but the petitioner must also show proper cause for granting the motion. As stated in the provision at 8 C.F.R. § 103.5(a)(4), "*Processing motions in proceedings before the Service . . . [a] motion that does not meet applicable requirements shall be dismissed.*"

B. Requirements for Motions to Reopen

The regulation at 8 C.F.R. § 103.5(a)(2), "*Requirements for motion to reopen*," provides: "A motion to reopen must [(1)] state the new facts to be provided in the reopened proceeding and [(2)] be supported by affidavits or other documentary evidence."

This provision is supplemented by the related instruction at Part 3 of the Form I-290B, which states:¹

Motion to Reopen: The motion must state new facts and must be supported by affidavits and/or documentary evidence.

Further, the new facts must possess such significance that, "if proceedings . . . were reopened, with all the attendant delays, the new evidence offered would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992); *see also Maatougui v. Holder*, 738 F.3d 1230, 1239-40 (10th Cir. 2013).

II. DISCUSSION AND ANALYSIS

In support of the motion to reopen, the petitioner submits: (1) a brief; (2) a statement, dated July 31, 2014, from [REDACTED] president of the petitioning entity; and (3) additional documentary evidence addressing the four grounds cited in our prior decision. In the petitioner's supporting statement, Mr. [REDACTED] points to prior approvals of L-1A nonimmigrant petitions that the petitioner filed on behalf of the same beneficiary, indicating that such approvals should serve as proof that the beneficiary's managerial or executive employment capacity had been previously established. We note, however, that each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. USCIS is not required to assume the burden of searching through previously provided evidence submitted in support of other petitions to determine the approvability of the petition in the present matter. The prior nonimmigrant approvals do not preclude USCIS from denying an extension petition. *See e.g. Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Similarly, the approval of a nonimmigrant petition in no way guarantees that USCIS will approve an immigrant petition filed on behalf of the same beneficiary. USCIS denies many I-140 immigrant petitions after approving prior nonimmigrant I-129 L-1 petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 25; *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Furthermore, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Mr. [REDACTED] also addressed deficiencies we pointed to in our prior decision with regard to the beneficiary's employment capacity in her position abroad and with the U.S.-based branch office by providing additional information about the beneficiary's credentials, her level of authority, and her assigned job duties in her

¹ The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

Every benefit request or other document submitted to DHS must be executed and filed in accordance with the form instructions, notwithstanding any provision of 8 CFR chapter 1 to the contrary, and such instructions are incorporated into the regulations requiring its submission.

position abroad and in the United States. Mr. [REDACTED] speculated as to reasons why the petitioner previously failed to address the issue of the beneficiary's job duties in her proposed employment with the petitioning branch office.

Lastly, Mr. [REDACTED] asked that we consider additional evidence in an effort to establish that the foreign branch office continues to do business and that the petitioner has the ability to pay the beneficiary's proffered wage. The record reflects the petitioner's submission of numerous invoices, receipts and other documents that were not accompanied by certified English language translations and thus have no probative value based on our inability to determine whether, or to what extent, the foreign language documents meet the requirements for a motion to reopen. See 8 C.F.R. § 103.2(b)(3). Although the petitioner also submits a number of documents containing English text, these documents bear dates indicating that they existed, and thus could have been submitted, at the time the petitioner filed the appeal.

Therefore, upon reviewing the evidence submitted in support of the motion, we find that the petitioner provided documents that do not meet the requirements of a motion. As indicated above, we are unable to determine the probative value of any evidence that is provided in a foreign language and unaccompanied by a certified English language translation. That said, even if such translations had been submitted, any document that existed prior to the date of the appeal or the filing of the petition cannot be deemed as having been previously unavailable and thus could have been submitted up until the date we dismissed the appeal.

III. DISMISSAL OF THE MOTION TO REOPEN

"There is a strong public interest in bringing [a case] to a close as promptly as is consistent with the interest in giving the [parties] a fair opportunity to develop and present their respective cases." *INS v. Abudu*, 485 U.S. 94, 107 (1988). Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden" of proof. *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner provided evidence and information that could have been provided either in support of the petition, in response to the director's request for evidence, or in support of the appeal. Therefore, the petitioner does not offer any new facts to warrant reopening this matter for further consideration.

As the petitioner has not met its burden, there is no basis upon which to grant the instant motion to reopen; therefore, the motion must be dismissed.

IV. CONCLUSION

The petitioner should note that, unless USCIS directs otherwise, the filing of a motion to reopen does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the motion will be dismissed, the proceedings will not be reopened, and our previous decision will not be disturbed.

ORDER: The motion is dismissed.